

## **RESOLUTION 2003-35**

### **A RESOLUTION CONCERNING THE FOURTH AMENDMENT TO THE PROJECT AGREEMENT BY AND BETWEEN THE CITY OF RISING SUN AND GRAND VICTORIA CASINO & RESORT, L.P.**

The Indiana Gaming Commission ("Commission") adopts the following resolution pursuant to the authority granted to it under IC 4-33 and pursuant to 68 IAC 1-2-6.

The following factors have been considered by the Commission:

1. On or about November 7, 1994, the City of Rising Sun ("City"), the Rising Sun/Ohio County Port Authority and the Redevelopment Commission of the City of Rising Sun entered into and executed a Project Agreement with Grand Victoria Casino & Resort, L.P. ("Grand Victoria"). The Project Agreement was made a part of the Certificate of Suitability issued to Grand Victoria on July 26, 1995. The Project Agreement was subsequently amended on January 4, 1996, May 1, 1996, and March 22, 2002.
2. On or about July 7, 2003, the City and Grand Victoria executed the Fourth Amendment to the Project Agreement. The Fourth Amendment has the effect of modifying Sections 3(f) and (g) of the Original Agreement, Section 9 of the First Amendment, and Section 11 of the Third Amendment.
3. A copy of the Fourth Amendment to the Project Agreement is labeled Exhibit "A" attached hereto and made a part of this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE INDIANA GAMING COMMISSION, THAT THE FOLLOWING RESOLUTION IS ADOPTED:**

#### **SECTION 1. SCOPE.**

This resolution applies to the City of Rising Sun, Indiana, and Grand Victoria Casino & Resort, L.P.

#### **SECTION 2. DEFINITIONS.**

The definitions set forth in IC 4-33-2 and 68 IAC apply to this resolution.

**SECTION 3. ACTION ON REQUEST FOR APPROVAL OF THE FOURTH  
AMENDMENT TO THE PROJECT AGREEMENT BY AND BETWEEN THE CITY OF  
RISING SUN AND GRAND VICTORIA CASINO & RESORT, L.P.**

The Commission hereby:

**GRANTS**  
\_\_\_\_\_  
GRANTS OR DENIES

the request of The City of Rising Sun and Grand Victoria Casino & Resort, L.P., to approve the Fourth Amendment to the Development Agreement by and between the City and Grand Victoria as labeled Exhibit "A" attached hereto and made a part of this resolution.

**SECTION 4. EFFECTIVE DATE.**

This resolution is effective immediately.

**ADOPTED THIS THE 11<sup>th</sup> DAY OF JULY, 2003:**

THE INDIANA GAMING COMMISSION:

*Donald R. Vowels* (FACSIMILE)  
Donald Vowels, Chair

*Thomas Milcarek* (FACSIMILE)  
Thomas Milcarek, Secretary

**FOURTH AMENDMENT  
TO  
PROJECT AGREEMENT**

This Fourth Amendment to the Project Agreement ("Fourth Amendment") is made as of the \_\_\_\_ day of July, 2003 ("Effective Date"), by and among the CITY OF RISING SUN, INDIANA ("City"), and GRAND VICTORIA CASINO & RESORT, L.P. ("Developer"), a limited partnership organized and existing under the laws of the State of Delaware, formerly known as Rising Sun Riverboat Casino and Resort, LLC. The term Local Government refers to the City, the Rising Sun/Ohio County Port Authority and the Redevelopment Commission of the City of Rising Sun, Indiana.

**RECITALS**

A. On or about November 7, 1994, Local Government and the Developer entered into and executed a Project Agreement ("Original Agreement").

B. On or about January 4, 1996, Local Government and the Developer entered into and executed the First Amendment to the Original Agreement ("First Amendment").

C. On or about May 1, 1996, Local Government and the Developer entered into and executed the Second Amendment to the Original Agreement ("Second Amendment").

D. On or about March 22, 2002, Local Government and the Developer entered into and executed the Third Amendment to the Original Agreement ("Third Amendment").

E. Collectively, the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment and this Fourth Amendment are referred to as the Project Agreement.

F. The City and the Developer now intend to modify Section 3(f) and (g) of the Original Agreement, Section 9 of the First Amendment and Section 11 of the Third Amendment.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and agreements contained in the Recitals, and with the intent of being legally bound, the City and the Developer agree to the following terms and conditions:

Section 1. Contribution Formula.

- a. The provisions of Section 3(f) and (g) of the Original Agreement, Section 9 of the First Amendment and Section 11 of the Third Amendment are hereby eliminated and replaced with terms set forth in the balance of this Section 1.
- b. Effective August 1, 2002 (commencement of flexible scheduling), and continuing thereafter, the Developer shall pay the Applicable Percentage

(as later defined) of its Adjusted Gross Receipts ("AGR"), as defined by IC 4-33-2-2, and reported to the Indiana Department of Revenue and the Indiana Gaming Commission ("IGC"), to the Rising Sun Regional Foundation ("Foundation").

- c. Within five (5) business days of the Effective Date of this Fourth Amendment, the Developer shall provide the City with a written reconciliation of the amount it actually paid for the period on or after August 1, 2002, through the execution of this Fourth Amendment (including additional amounts paid in anticipation of executing this Fourth Amendment) versus the amount it is obligated to pay the Foundation under the application of the Applicable Percentage of the AGR formula set forth in this Section 1. If the reconciliation reveals the Developer owes the Foundation additional monies under the Applicable Percentage of the AGR formula, the Developer shall pay that money to the Foundation, via wire transfer, within five (5) business days of the Effective Date of this Fourth Amendment. If the reconciliation discloses an overpayment by the Developer, the overpayment shall be credited against amounts the Developer subsequently is obligated to pay to the Foundation pursuant to this Fourth Amendment.
- d. Annually, and within thirty (30) days of the end of each year, the Developer shall provide the City and the Foundation with a report, signed by an authorized representative of the Developer, setting forth the amount of the Developer's AGR for the preceding year. This report shall also set forth the amount the Developer is obligated to pay the Foundation pursuant to this Section 1 and the amount actually paid to the Foundation. This report shall be accompanied by payment of any underpayment disclosed by said report. If this report discloses an overpayment by the Developer, the overpayment shall be credited against amounts the Developer subsequently is obligated to pay to the Foundation pursuant to this Fourth Amendment.
- e. For AGR reported for the period from August 1, 2002, through December 31, 2002, the Applicable Percentage shall be 1.85%.
- f. For AGR reported for the period January 1, 2003, through December 31, 2003, the Applicable Percentage shall be 1.75%.
- g. For AGR reported for the period January 1, 2004, through December 31, 2004, the Applicable Percentage shall be 1.65%.
- h. For AGR reported for the period January 1, 2005, through December 31, 2005, the Applicable Percentage shall be 1.6%.
- i. For AGR reported for the period January 1, 2006, through December 31, 2006, and all subsequent years, the Applicable Percentage shall be 1.55%

if AGR for such year is \$150,000,000 or less and 1.6% of all AGR if AGR, for such year is more than \$150,000,000.

- j. The payments the Developer makes to the Foundation pursuant to paragraphs e through i of this section shall be made on a calendar month basis, in arrears, on the fifth day of each calendar month for the previous calendar month. The Developer shall also provide the City and the Foundation a report, signed by an authorized representative of Developer, by the fifteenth day of each calendar month identifying the AGR for the prior calendar month. This obligation shall survive the termination of the Project Agreement.

For calendar year 2006 and all subsequent years Developer shall, in the monthly report pursuant to this subsection, advise the City and the Foundation when and if it has reached an AGR of \$150,000,000 for that calendar year and providing a reconciliation of the amount it actually paid versus the amount payable at 1.6% of AGR through the reconciliation period. Developer shall, within five (5) business days, of submitting a monthly report pursuant to this subsection indicating it has reached an AGR of \$150,000,000 for a calendar year, pay the Foundation, via wire transfer, the difference reflected in the reconciliation. For the month in which the Developer reaches \$150,000,000 of AGR and for the remainder of the calendar year, Developer shall make payments, pursuant to this Section 1, at the rate of 1.6% of AGR.

- k. The Developer acknowledges and agrees that any and all distributions pursuant to the Act of admission taxes, wagering taxes, and other revenue received by the Non-Profit (as defined in Paragraph 7 of the First Amendment), the Local Government or any other governmental entity with respect to the Project shall not be included in the determination of the amount the Developer is required to pay to the Foundation pursuant to the express terms of this Fourth Amendment.

#### Section 2. Future Actions.

The City and the Developer acknowledge and understand:

- a. That the City must take future actions to implement this Fourth Amendment;
- b. The City's representations, covenants and agreements are subject to and contingent upon the compliance with and completion of applicable statutory procedures, including without limitation, any applicable public notice and public hearing requirements and any appeal rights; and
- c. The City's obligations hereunder, are limited, respectively, to working in good faith to effectuate the purposes of this Fourth Amendment.

Section 3. Miscellaneous Provisions.

- a. Without further consideration, the City and Developer shall each execute, acknowledge, and deliver any documents reasonably requested by the other party and will take any other action consistent with the terms of this Fourth Amendment that the other party may reasonably request.
- b. This Fourth Amendment may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.
- c. This Fourth Amendment and all transactions contemplated hereby shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules.
- d. No supplement, modification, or amendment of this Fourth Amendment shall be binding unless executed in writing by all the Parties.
- e. All notices, requests, demand, waivers, and other communications required or desired to be given under this Fourth Amendment or the Project Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the Party to whom notice is to be given by certified mail, return receipt requested, and properly addressed as follows:

If to the City, to:

Mayor of Rising Sun  
City of Rising Sun Administration Building  
200 N. Walnut  
P. O. Box 172  
Rising Sun, Indiana 47040

With a copy to:

Clerk/Treasurer of Rising Sun  
City of Rising Sun Administration Building  
200 N. Walnut  
P. O. Box 172  
Rising Sun, IN 47040

With a copy to:

Phillip L. Bayt  
ICE MILLER  
One American Square, Box 82001  
Indianapolis, IN 46282-0002

If to the Developer, to: Hyatt Development Corporation  
ATTN: Daniel Azark  
200 West Madison, Suite 4200  
Chicago, IL 60606

With copies to: Grand Victoria Casino & Resort, L.P.  
ATTN: General Manager  
600 Grand Victoria Drive  
Rising Sun, IN 47040

Neal, Gerber & Eisenberg  
ATTN: Philip M. Kayman  
Two North LaSalle Street, Suite 2200  
Chicago, IL 60602

- f. This Fourth Amendment shall be binding on, and shall inure to the benefit of, the City and the Developer and their respective successors and assigns; provided, however, that the Developer may not assign its obligations or rights under this Project Agreement without the written consent of the City, which may decide whether to permit the assignment within its sole discretion.
- g. The City shall be entitled to both legal and equitable relief for any breach by the Developer of its obligations under this Fourth Amendment or any of the continuing obligations of the Project Agreement. In addition, the City and the Developer shall be entitled to the recovery of reasonable attorneys' fees in enforcing their respective rights under this Fourth Amendment or any of the continuing obligations of the Project Agreement.
- h. The City and the Developer acknowledge and agree that the Gaming Commission has exclusive jurisdiction over certain matters relating to riverboat gaming as the Act [IC 4-33] may be read and interpreted by courts of competent jurisdiction. The City agrees that if the terms of this Fourth Amendment conflict with the Act [IC 4-33] or regulations in a matter that is within the exclusive jurisdiction of the Gaming Commission, the decision of the Gaming Commission shall control such matter.
- i. The obligations of the City and the Developer to this Fourth Amendment shall survive where expressly so stated or where the parties mutually intend that the obligations shall be performed after termination.
- j. Except as expressly amended in this Fourth Amendment, the terms of the Original Agreement, the First Amendment, the Second Amendment and the Third Amendment shall remain unchanged and in full force and effect.

- k. Capitalized terms not defined herein shall have the meaning ascribed in the Original Agreement.

IN WITNESS WHEREOF, the City and the Developer have caused their duly authorized representatives to execute this Fourth Amendment as of the day and year first above written.

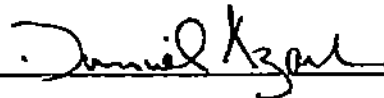
THE CITY OF RISING SUN, INDIANA

By: \_\_\_\_\_

Printed: Steven A. Stewart

Title: Mayor

GRAND VICTORIA CASINO & RESORT, L.P.

By: \_\_\_\_\_

Printed: Daniel Azark

Title: Authorized Signer